

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

NOV 15 2016

at 12 o'clock and 40 min. P.M.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT
FOR THE STATE OF HAWAII

NAPOLEON T. ANNAN-YARTEY SR.

PLAINTIFF/PRO-SE

VS.

1.OFFICER T. MURANAKA,
2.OFFICER ROYCE S. OHIRA
3.OFFICER CHAD K. MURPHY
4. HONOLULU CHIEF OF POLICE
LOUIS KEALOHA HPD.
5.HONOLULU POLICE
DEPARTMENT
6.CITY AND COUNTY OF
HONOLULU
7.ALL POLICE OFFICERS
INVOLVED AND OFFICIALS

Defendant

Case No.: CV 16 00590 JMS/KJM

PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR CIVIL RIGHT
VIOLATION

DEMAND A JURY TRIAL:
~~SUMMONS~~ NA

COMPLAINT FILED: NOV/01/2016

PLAINTIFF NAPOLEON T. ANNAN-YARTEY'S CIVIL RIGHTS
COMPLAINT WITH REQUEST FOR TRIAL BY JURY

I. INTRODUCTION

1. This is a civil rights action brought by Plaintiff Napoleon T. Annan-Yartey to seek relief for the Defendants' violations of his rights secured by the Civil Rights Act of and 1871, 42 U.S.C. § 1983, 1985(3) and the rights secured by the First,

1 Fourth, Fifth and Fourteenth Amendments to the United States Constitution the
2 rights secured under the Constitution of the State of Hawaii, Article I, Sections 2,
3 3,5,6,7. And Federal Statute 28 USC section 1658. Plaintiffs seek compensatory and
4 punitive damages, injunctive and declaratory relief, and such other relief as this
5 Court deems equitable and just.
6

7
8 2. Plaintiff, Napoleon T. Annan-Yartey a Pro-Se, complains against
9 Defendants and requests trial by jury as follows: as a Pro-Se brings this Civil Action
10 against all the above mentioned Defendants: The City and County of Honolulu,
11 Officer T. Muranaka, Officer Royce S. Ohira, Officer Chad K. Murphy, Chief of
12 Police Louis Kealoha Honolulu Police Department, Honolulu Police Department
13 collectively, the (Defendants) Plaintiff alleges as follows: The City of Honolulu
14 through the Honolulu Police Department, the Honolulu Municipal Court, and the
15 office of the City Prosecuting Attorney, engages in an ongoing pattern of practice of
16 conduct, including discrimination, that deprives persons of right, privilege and
17 immunities secured and protected by the United States Constitution and Federal
18 Law.
19

20
21
22 Honolulu Law enforcement officials conduct stops, search and arrest and
23 destroy innocent man's property without legal justification, in violation of the fourth
24 Amendment. Use excessive force in violation of the fourth Amendment, interfere
25 with the right to free expression, in violation of the first Amendment prosecute and
26 resolve Municipal charges in a manner that violates due process and equal protection
27 guarantees of the fourteenth Amendment, and discriminate against blacks in
28 violation of the fourteenth Amendment and Federal Statutory Law.
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1 Plaintiff also bring this action to vindicate profound deprivations of his
2 constitutional rights caused by race based on police misconduct through the HPD
3 and the district court system of destroying Plaintiff's federal Issued Identification
4 Card and personal property and refusal to expunge fifty non-convicted cases from
5 the courts data base, and also from the public computers has deprived plaintiff to
6 secure jobs that require security clearance before hiring also plaintiff has been
7 arrested and jailed by the Honolulu Police Department and the Attorney General
8 has prosecuted such cases without probable cause all cases went through trial and
9 end up with the verdict in favor of the Plaintiff Mr. Annan-Yartey
10
11

12 II JURISDICTION

13
14 3. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343(3)
15 and, as this action seeks redress for the violation of Plaintiff's constitutional and civil
16 rights.

17
18 4. Plaintiff's claims for declaratory and injunctive relief are authorized by 28
19 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, also
20 under the Constitution and laws of the United States, including Article III, Section 1
21 of the United States Constitution and is brought pursuant to 42 U.S.C. §§ 1981, 1983
22 and 42 U.S.C. § 1988.

23
24 5. Plaintiff further invoke this Court's supplemental jurisdiction, pursuant to
25 28 U.S.C. § 1367(a), over any and all state constitutional and state law claims that
26 are so related to the claims within the original jurisdiction of this Court that they
27 form part of the same case or controversy.
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III

VENUE

6. Venue is proper in the United States District Court for the District of Hawaii pursuant to 28 U.S.C. § 1391(b) The Parties resides in this judicial district, and the events giving rise to the claims asserted herein occurred here as well

NOTICE OF CLAIM

7. Within ninety of the incident, Plaintiff filed a written Notices of Claim upon Defendant City of Honolulu by delivering copies of the notices to the person designated by law as a person to whom such claims may be served.
statutory time period.

8. This is an action was brought by Napoleon T. Annan-Yartey, A black male to vindicate profound deprivations of his constitutional rights caused by race based police brutality.

9. On December 11, 2013, Plaintiff, then 59 years old, was arrested by Honolulu police when he was crossing the street at Pensacola and King Street for an allegedly illegal arrested the Plaintiff for an alleged obedience to Don't walk or Upraised Red Palm HRS 291C-33(2) and there after cited Plaintiff for criminal Littering

10. During the course of this arrest, Mr. Annan-Yartey was harassed, assaulted and battered, and racially branded by Honolulu police officers who called him "nigger." And "crazy" illegal searched at the time, he was known to be defenseless.

IV.

THE PARTIES

11. At all times relevant hereto, Plaintiff Napoleon T. Annan-Yartey was a resident of the State of Hawaii and a permanent Resident of the United States of America.

1 12. At all times relevant hereto, Defendant Officer T. Muranaka, Badge 3128
2 was a citizen of the United States and a resident of the State of Hawaii and was acting
3 under color of state law in his capacity as a law enforcement officer employed by
4 the Defendant City and/or of the Honolulu Police Department. Defendant Murunaka
5 is sued individually.
6

7 13. At all times relevant hereto, Defendant Chad K. Murphy was a citizen of
8 the United States and a resident of the State of Hawaii and was acting under color of
9 state law in his capacity as a law enforcement officer employed by the Defendant
10 City and County of Honolulu and/or of the Honolulu Police Department. Defendant
11 Murphy is sued individually.
12

13 14. At all times relevant hereto, Defendant Officer Ohira was a citizen of the
14 United States and a resident of the State of Hawaii and was acting under color of
15 state law in his capacity as a law enforcement officer employed by the Defendant
16 City and County of Honolulu and/or of the Honolulu Police Department. Defendant
17 Officer Ohira sued individually.
18

19 15. Defendant City & County of Honolulu hereinafter "Defendant City" is a
20 Hawaii municipal corporation and is the legal entity responsible for itself and for the
21 Honolulu Police Department. This Defendant is also the employer of the individual
22 Defendants and is a proper entity to be sued under 42 U.S.C. § 1983.
23

24 16. At all times relevant hereto, Defendant Louis M. Kealoha was a citizen of
25 the United States and a resident of the State of Hawaii. Defendant Louis is sued in
26 his official capacity as the Chief of the Honolulu Police department, employed by
27 the Defendant City and/or the Honolulu Police Department, and was acting under
28 color of state law.
29

30 17. As the Chief of the Honolulu Police Department, Defendant Louis M.
31 Kealoha both exercised and delegated their municipal final decision making power
32

1 to the Internal Affairs Bureau and others. On information and belief, he also trained
2 and supervised individual Defendants Muranaka. Murphy and T. Ohira
3

4 18. Defendant City and County and Defendant Louis M. Kealoha are properly
5 sued directly under 42 U.S.C. § 1983 for their own and their delegated deliberately
6 indifferent unconstitutional decisions, policies, practice, habits, customs, usages,
7 training and derelict supervision, ratification, acquiescence and intentional failures
8 which were moving forces in the complained of constitutional and statutory
9 violations and resulting injuries.
10

11 19. The Defendant City is also properly sued under 42 U.S.C. § 1983 for the
12 challenged delegated final decisions of Defendant Louis M. Kealoha in his official
13 capacity as the Chief of the Honolulu Police Department, and for those of any final
14 delegated decision makers, with respect to the hereinafter challenged deliberately
15 indifferent policies, decisions, widespread habits, customs, usages and practices.
16

17 V. FACTS ALLEGED IN THE COMPLAINT
18

19 20. Plaintiff incorporates all of the preceding, including the allegations and in
20 the Introduction, as if they were fully set forth again at this point. This is a Section
21 1983 action brought by a Plaintiff Pro-se against three Honolulu Police officers.
22

23 21. The plaintiffs, Napoleon T. Annan-Yartey Sr., went to Walmart to
24 purchase food. After purchasing the food, he decided to walk to the State House, He
25 walked through Pensacola at the junction between Pensacola and South King, he
26 cross the street with other pedestrians after crossing he start to walk towards
27 Northbound King Street then heard a voice coming from HPD vehicle asking him
28 and quote "what is in your bag, he asked the plaintiff.
29

30
31 22. Plaintiff asked thereafter if there was any probable cause or warrant, he
32 replied hold it, you are under arrest, then again plaintiff asked defendant Officer

1 Muranaka for what? Then Officer Travis Y. Muranaka came out of the vehicle and
2 got on the radio for a backup. Officer T. Ohira arrived shortly thereafter.

3
4 23. Plaintiff was obeying all traffic laws and that Officer Muranaka and the
5 other two officers had no reasonable probable cause to stop or arrest him

6
7 24. Even though plaintiff cooperated and posed no threat to the officers, the
8 three officers violently pulled him by his neck and then threw him on the ground his
9 head hit the ground causing a broken tooth, had a cut on his lips started to bleed
10 blood in his mouth thereafter he starts to have headaches and a day later he couldn't
11 wake up and do the normal things he normally does.

12
13 25. He was subsequently arrested and held without probable cause, such
14 action violates his civil right under the United States Constitution also rights under
15 Fourth and Fourteenth Amendments. Plaintiff brings these claims for unlawful
16 detention, racial profiling, excessive force, false arrest, false imprisonment, and
17 malicious prosecution, Negligent infliction of emotional distress, free from an
18 irresponsible search and seizure of his person

19
20 26. Shortly after officer Muranaka stopped the plaintiff, Officer Ohira of
21 Honolulu Police Department arrived thereafter Officer Murphy, officer Murunaka
22 asked Napoleon for his Identification and he provided it to him.

23
24 27. Plaintiff did not refuse, but asked the Officers if he could ask a question.
25 Officer Muranaka said "no you niggers do not have rights" plaintiff asked the second
26 time then Officer Ohira said "oh shut up you nigger" if you do not shut up I am going
27 to lock you up and take you to jail" Plaintiff was not allow to say a word he
28 immediately presents his identification and did whatever they asked him to do,
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1 28. Officer Muranaka ordered Mr. Annan-Yartey to raise his two hands then
2 all the three officers rushed to Plaintiff and grab his hands and hand-cuffed him and
3 Officer Muranaka started searching through plaintiff's bag without any warrant or
4 probable cause, he did not find anything or any contraband this was done in violation
5 of Plaintiff's civil rights
6

7
8 29. Before Napoleon could ask about his bag Officer Ohira grab plaintiff's
9 neck, causing him to choke. Upon seeing this, Plaintiff screamed and begged for
10 Officer Ohira to stop. The officers slammed Plaintiff's into the ground again, and
11 kept him face down on the ground while the defendants tightening the handcuffed
12 and removed his wallet.
13

14
15 30. After Napoleon was handcuffed, Officer Muranaka began to interrogate
16 Plaintiff about how much money he was carrying and where he was going. Napoleon
17 answered there was no money and that he was on his way to the State building for a
18 meeting.
19

20
21 31. The defendants subsequently put plaintiff's face down on the ground,
22 handcuffed him and kept interrogating him. Throughout this sequence of events, the
23 defendants never informed the plaintiff as to why he was stopped.
24

25 32. The plaintiff did not commit any unlawful acts and never posed a threat to
26 the defendants. The plaintiff did not attempt to resist or evade arrest and was not
27 acting violently or dangerously. The defendants did not have reasonably suspicion
28 or probable cause to handcuff the plaintiffs.
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1 33. The defendants did not read the plaintiffs his Miranda rights. After being
2 held outside for a lengthy period of time, Officer Muranaka announced that the
3 plaintiff "came up clean."
4

5 34. The defendants prepared affidavits of Probable Cause for Plaintiff, which
6 contained false statements or omissions. Based on the Affidavit of probable cause
7 prepared by the defendants,
8

9 Napoleon was charged with (1) one count of criminal Littering (2) disobeyed traffic
10 signal based on the Affidavit of probable cause prepared by defendants, following
11 the arraignment.
12

13 35. Other named Defendant officers joined Defendant Muranaka in
14 conducting an arrest of Plaintiff and assisted in placing Mr. Annan-Yartey into
15 custody. Other named Defendant Officers struck Plaintiff as he was placed into
16 custody. Other named Defendant Officers struck Plaintiff as he was placed into
17 custody.
18

19 36. At all times during the encounter with Defendants Muranaka and all other
20 named Defendant police officers, Plaintiffs Mr. Annan-Yartey acted in a lawful
21 manner. Plaintiff did not resist the illegal arrests in any manner. Plaintiffs was
22 initially charged with disobeyed traffic signal was charged again with Criminal
23 Littering.
24

25 37. Plaintiffs was released on his own recognizance.
26

27 38. All criminal complaints, allegations and charges were sworn to under oath
28 by Defendant Muranaka as true, even though he knew them to be false.
29

30 39. All charges were dismissed, with prejudice, on the motion of the District
31 Attorney of Honolulu.
32

1 40. The Plaintiff was required to appear in court on several occasions related
2 to the false criminal charges against him. Plaintiff incurred legal and other expenses
3 as a result of these wrongful arrest and prosecutions.
4

5 41. At all times herein, the individual Defendants had no cause, let alone
6 probable cause or reasonable suspicion, to arrest, exercise excessive force, charge
7 and detain Plaintiff. Their actions were based on malice and bad faith and were
8 supported by the false statements made by the Defendants under oath.
9
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11 42. The conduct of the individual Defendants in restraining, arresting,
12 striking, threatening and prosecuting the Plaintiff proximately caused physical,
13 emotional and financial injury to him, as well as serious physical and emotional pain
14 and suffering, mental anguish, shock, fright, physical pain, humiliation,
15 embarrassment and deprivation of his constitutional rights. Plaintiff suffered the
16 trauma, debasement and humiliation as a result of being publicly arrested without
17 any cause, and assaulted, unlawfully imprisoned and maliciously prosecuted.
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21 43. At all times relevant herein, the individual Defendants acted intentionally,
22 willfully, maliciously, negligently, and with reckless disregard for and deliberate
23 indifference to the Plaintiff's rights and physical and mental well-being by arresting,
24 imprisoning and prosecuting Plaintiffs.
25

26 44. The actions of the individual Defendants, as set forth herein, were the
27 result of the failure of the City of Honolulu Department's failure to properly train,
28 supervise and discipline its officers, including Defendants Officer Ohira and all other
29 named defendant Police Officers. This failure to train, supervise and discipline is a
30 consequence of the deliberate policies and practices of the Defendant City of
31
32

1 Honolulu and its HPD. These policies and practices are in part responsible for the
2 unconstitutional, wrongful, deliberate, malicious, negligent, careless and intentional
3 actions of the individual Defendants.
4

5 45. At all relevant times herein, Defendant City of Honolulu, acting through
6 its HPD, developed, implemented, enforced, encouraged and sanctioned de facto
7 policies, practices, and/or customs exhibiting deliberate indifference to the Plaintiffs'
8 constitutional rights which caused the violation of his rights.
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11 46. Defendants' unlawful actions were done willfully, knowingly and with the
12 specific intent to deprive Plaintiff of his constitutional rights under the First, Fourth,
13 Fifth and Fourteenth Amendments to the United States Constitution.
14

15 47. The constitutional abuses and violations by Defendant City of Honolulu,
16 through the actions of its HPD and all other named Defendant police officers, were
17 and are directly and proximately caused by policies, practices and/or customs
18 developed, implemented, enforced, encouraged and sanctioned by Defendant City
19 of Honolulu, including the failure:
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22 (a) To adequately supervise and train its officers and agents, including the
23 Defendants, thereby failing to adequately discourage further constitutional
24 violations on the part of its police officers;
25

26 (b) To properly and adequately monitor and discipline its officers, including
27 Defendants; and
28

29 (c) To adequately and properly investigate citizen complaints of police
30 misconduct, instead, acts of misconduct were tolerated by the City of Honolulu.
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1 48. Upon information and belief, Defendant City of Honolulu has, acting
2 through its HPD, developed, implemented, enforced, encouraged and sanctioned a
3 de facto policy, practice, and/or custom of unlawfully interfering with and/or
4 arresting, without reasonable suspicion or probable cause, individuals who exercise
5 their rights under the First Amendment by engaging in monitoring and documenting
6 police activities and/or misconduct.
7

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9 49. Defendants' unlawful actions were done willfully, knowingly and with the
10 specific intent to deprive Plaintiff of his constitutional rights under the First, Fourth,
11 Fifth and Fourteenth Amendments to the U.S. Constitution.
12

13 50. Defendants have acted with deliberate indifference to the constitutional
14 rights of Plaintiff. As a direct and proximate result of the acts as stated herein by
15 each of the Defendants, the Plaintiff's constitutional rights have been violated which
16 has caused him to suffer physical, mental and emotional injury and pain, mental
17 anguish, suffering, humiliation and embarrassment.
18

19 51. Plaintiff has no adequate remedy at law and will suffer serious and
20 irreparable harm to their constitutional rights unless Defendants are enjoined from
21 continuing their unlawful policies, practices, and/or customs which have directly and
22 proximately caused such constitutional abuses.
23

24 52. The criminal proceedings against Mr. Annan-Yartey went to trial and the
25 court came with a (not guilty verdict) thereafter all charges were dismissed in favor
26 of Plaintiff's. See exhibit "A"
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1 VI.

CAUSE OF ACTION

2 FIRST CLAIM FOR RELIEF

3
4 42 U.S.C. § 1983 and Fifth and Fourteenth Amendments by Plaintiff against all
5 Defendants Plaintiff repeat and re-allege by reference paragraphs 1 through 56 as if
6 fully set forth herein.
7

8 53. The acts of the individual Defendants, under color of state law, in arresting
9 Plaintiff Mr. Annan-Yartey verbally abusing Plaintiff, and in physically assaulting
10 Plaintiff was racially motivated, undertaken without lawful justification, taken with
11 deliberate indifference to Plaintiff's rights, and were designed to, and did, cause
12 specific and serious bodily harm, pain and suffering to the Plaintiff in violation of
13 his constitutional rights as guaranteed by the Fifth and Fourteenth Amendments of
14 the United States Constitution. Through these actions, Defendants are liable for
15 violation of 42 U.S.C. § 1983 which prohibits the deprivation under color of state
16 law of rights secured under the United States Constitution.
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21 54. As a consequence of the individual Defendants' actions, Plaintiff have
22 suffered violations of his due process rights under the Fifth and Fourteenth
23 Amendments. Plaintiff have fear and apprehension that he will, again, be subject to
24 similar unlawful acts by Defendants.
25

26 55. As a direct and proximate result of the Defendants' unlawful actions,
27 Plaintiff have suffered, and will continue to suffer, damages including, physical,
28 mental and emotional injury and pain, mental anguish, suffering, humiliation and
29 embarrassment.
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SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 and Fourth and Fourteenth Amendments by Plaintiff Against all Defendants. Plaintiff repeats and re-allege by reference paragraphs I through 59 as if fully set forth herein.

56. By their conduct, as described herein, and acting under color of state law to deprive the Plaintiff of his rights to be free from unreasonable searches and seizures and arrest without reasonable suspicion or probable cause as required by the Fourth and Fourteenth Amendments, Defendants are liable for violation of 42 U.S.C. § 1983 which prohibits the deprivation under color of state law of rights secured under the United States Constitution.

57. As a direct and proximate result of Defendants' unlawful actions, Plaintiff have suffered, and will continue to suffer, damages including, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment.

THIRD CLAIM FOR RELIEF

42 U.S.C. § 1983 and Fourth and Fourteenth Amendments by Plaintiff Against all Defendants. Plaintiff repeat and re-allege by reference paragraphs 1 through 60 as if fully set forth herein.

58. By their conduct, as described herein, and acting under color of state law to deprive the Plaintiff of his rights to be free from excessive force in the course of an arrest as required by the Fourth and Fourteenth Amendments, the individual Defendants are liable for violation of 42 U.S.C. § 1983 which prohibits the deprivation under color of state law of rights secured under the United States

1 Constitution. As a direct and proximate result of Defendants' unlawful actions,
2 Plaintiffs have suffered, and will continue to suffer, damages including, physical,
3 mental and emotional injury and pain, mental anguish, suffering, humiliation and
4 embarrassment
5

6
7 **FOURTH CLAIM FOR RELIEF**

8 42 U.S.C. § 1983 and Fourth and Fourteenth Amendments by Plaintiff and against
9 all Defendants. Plaintiff repeat and re-allege by reference paragraphs 1 through 61
10 as if fully set forth herein.
11

12 59. By their conduct, as described herein, and acting under color of state law,
13 Defendants are liable to each Plaintiff under 42 U.S.C. § 1983 for the violation, of
14 his constitutional right to be free from malicious prosecution under the Fourth and
15 Fourteenth Amendments to the United States Constitution.
16

17 60. Defendants' unlawful actions were done willfully, knowingly, with malice
18 and with the specific intent to deprive Plaintiff of his constitutional rights. The
19 prosecution by Defendants of each Plaintiff constituted malicious prosecution in that
20 there was no basis for the Plaintiff's arrest, yet Defendants continued with the
21 prosecutions, which were resolved in Plaintiff's favor.
22

23 61. As a direct and proximate result of Defendants' unlawful actions, Plaintiff
24 have suffered, and will continue to suffer, damages including, physical, mental and
25 emotional injury and pain, mental anguish, suffering, humiliation and
26 embarrassment.
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FIFTH CLAIM FOR RELIEF

42 U.S.C. § 1983 and Fifth and Fourteenth Amendments by Plaintiff Against all Defendants.

62. Plaintiff repeats and re-allege by reference paragraphs 1 through 64 as if fully set forth herein. By their conduct, as described herein, Defendants are liable to each plaintiff under 42 U.S.C. § 1983 for the violation, under color of state law, of the constitutional right to be free from any deprivation of liberty without due process of law under the Fifth and Fourteenth Amendments to the United States Constitution.

63. As a direct and proximate result of Defendants' unlawful actions, Plaintiff have suffered, and will continue to suffer, damages including, physical, mental and emotional injury and pain, mental anguish, suffering, humiliation and embarrassment.

SIXTH CLAIM FOR RELIEF

(Monell Claim)

64. Plaintiff repeat and re-allege by reference paragraphs 1 through 66 as if fully set forth herein.

65. At all relevant times herein, Defendant City of HONOLULU acting through its HPD, developed, implemented, enforced, encouraged and sanctioned de facto policies, practices, and/or customs exhibiting deliberate indifference to the Plaintiffs' constitutional rights which caused the violation of such rights.

1 66. Defendants' unlawful actions were done willfully, knowingly and with the
2 specific intent to deprive Plaintiff of his constitutional rights under the First, Fourth,
3 Fifth and Fourteenth Amendments to the U.S. Constitution.
4

5 67. The constitutional abuses and violations by Defendant City of Honolulu,
6 through the actions of its Police Department and all named Defendants, were and are
7 directly and proximately caused by policies, practices and/or customs developed,
8 implemented, enforced, encouraged and sanctioned by Defendant City of Honolulu,
9 including the failure:
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12 (a) To adequately supervise and train its officers and agents, including the
13 Defendants, thereby failing to adequately discourage further constitutional
14 violations on the part of its police officers;
15

16 (b) To properly and adequately monitor and discipline its officers, including
17 Defendants; and
18

19 (c) To adequately and properly investigate citizen Complaints of police
20 misconduct and instead, acts of misconduct were tolerated by the City of Honolulu
21

22 68. Upon information and belief, Defendant City of Honolulu has, acting
23 through its HPD, developed, implemented, enforced, encouraged and sanctioned a
24 de facto policy, practice, and or custom of unlawfully interfering with and or
25 arresting, without reasonable suspicion or probable cause, individuals who exercise
26 their rights under the First Amendment by engaging in monitoring and documenting
27 police activities and/or misconduct.
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1 69. Defendants' unlawful actions were done willfully, knowingly and with the
2 specific intent to deprive Plaintiffs of their constitutional rights under the First,
3 Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution.
4

5 70. Defendants have acted with deliberate indifference to the constitutional
6 rights of Plaintiff. As a direct and proximate result of the acts as stated herein by
7 each of the Defendants, the Plaintiff's constitutional rights have been violated which
8 has caused them to suffer physical, mental and emotional injury and pain, mental
9 anguish, suffering, humiliation and embarrassment.
10

11 71. Plaintiff have no adequate remedy at law and will suffer serious and
12 irreparable harm to their constitutional rights unless Defendants are enjoined from
13 continuing their unlawful policies, practices, and! Or customs which have directly
14 and proximately caused such constitutional abuses.
15
16

17 SEVENTH CLAIM FOR RELIEF

18 Article I, Section 11 of Hawaii State Constitution
19

20 72. Plaintiff repeat and re-allege by reference paragraphs 1 through 74 as if
21 fully set forth herein
22

23 73. The acts of Defendants, acting under color of law, in arresting Plaintiff
24 and in physically assaulting Plaintiff were racially motivated and were done
25 without lawful justification, and were designed to and did cause specific and
26 serious bodily harm, pain and suffering to the Plaintiff in violation of his
27 Constitutional rights to equal protection as guaranteed by Article I, Section 2,
28 3,5,6,7 of the Constitution of the State of Honolulu.
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1 74. The foregoing acts and conduct of Defendants were a direct and
2 proximate cause of injury and damage to Plaintiff and violated their rights as
3 guaranteed by the Constitution of the State of Honolulu
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5 EIGHTH CLAIM FOR RELIEF
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7 **Article I, Section 12 of Hawaii State Constitution**

8 75. Plaintiff repeats and re-allege by reference paragraphs 1 through 77 as if
9 fully set forth herein.
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11 76. The acts of Defendants, acting under color of law, in subjecting Plaintiff
12 to unlawful search and seizure, arrest and excessive force by physically assaulting
13 Plaintiffs were done without reasonable suspicion or probable cause and were
14 designed to, and did cause, specific and serious bodily harm, pain and suffering to
15 the Plaintiff in violation of their Constitutional rights as guaranteed by Article I,
16 Section 2 of the Constitution of the State of Hawaii
17

18 77. The foregoing acts and conduct of Defendants were a direct and proximate
19 cause of injury and damage to Plaintiffs and violated their rights as guaranteed by
20 the Constitution of the State of Hawaii.
21

22 NINTH CLAIM FOR RELIEF
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24 State Common Law Malicious Prosecution Case Plaintiff repeat and re-allege by
25 reference paragraphs 1 through 80 as if fully set forth herein.
26

27 78. By their conduct, as described herein, Defendants are liable to Plaintiff for
28 having committed malicious prosecution under the laws of the State of Hawaii.
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30 79. Defendants maliciously commenced criminal proceedings against
31 Plaintiff, charging him with disobedient to Traffic signal. Plaintiff was additionally
32

1 charged with Criminal Littering defendants falsely and without probable cause
2 charged Plaintiffs with violations of the laws of the State of Hawaii.
3

4 80. The commencement and continuation of the criminal proceedings against
5 Plaintiffs was malicious and without probable cause.
6

7 81. All 65 charges were terminated in Plaintiff's favor.
8

9 82. Defendants, their officers, agents, servants and employees were
10 responsible for the malicious prosecution of Plaintiff. Defendant City of Honolulu,
11 as an employer of the individual Officers
12

13 83. Defendants, is responsible for their wrongdoing under the doctrine of
14 respond eat superior. As a direct and proximate result of the misconduct and abuse
15 of authority stated above, Plaintiffs sustained the damages alleged herein.
16

17 TENTH CLAIM FOR RELIEF

18 (Respond eat Superior)

19 84. Plaintiff repeats and re-alleges paragraphs 1 through 86 as if fully set forth
20 herein.
21

22 85. The conduct of all Defendants occurred while they were on duty and in
23 uniform, in and during the course and scope of their duties and functions as Honolulu
24 City Police Officers and while they were acting as agents and employees of the
25 Defendant City of Honolulu. Defendant City of Honolulu is liable to Plaintiffs under
26 the common law doctrine of respond eat superior.
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ELEVENTH CLAIM FOR RELIEF

42 U.S.C. § 1983 – Racial Discrimination in Violation of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1981

(Against Defendants Officer Muranaka, Officer Chad and Officer Ohiro

85. Plaintiff hereby incorporates all other paragraphs of this Complaint as if fully set forth herein.

86. 42 U.S.C. § 1983 provides that:

Every person, who under color of any statute, ordinance, regulation, Custom or usage of any state or territory or the District of Columbia Subjects or causes to be subjected any citizen of the United States Or other person within the jurisdiction thereof to the deprivation of Any rights, privileges or immunities secured by the constitution and Law shall be liable to the party injured in an action at law, suit in Equity or other appropriate proceeding for redress . . .

87. Plaintiff in this action is a Permanent Resident of the United States and all of the individual officer Defendants to this claim are persons for purposes of 42 U.S.C. § 1983

88. All individual Defendants to this claim, at all times relevant hereto, were acting under the color of state law in their capacity as Honolulu police officers and their acts or omissions were conducted within the scope of their official duties or employment.

89. At the time of the complained of events, Plaintiff had the clearly established constitutional right to be free from racial discrimination in law enforcement by police officers and to enjoy the equal protection of the laws.

90. Title 42 U.S.C. § 1981("Section 1981") provides, in pertinent part:

(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties,

1 give evidence, and to the full and equal benefit of all laws and proceedings for the
2 security of persons and property as is enjoyed by white citizens, and shall be subject
3 to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and
4 to no other.
5

6
7 91. Plaintiff, as an African male is a member of a protected class, and thus
8 also had the clearly established statutory right under this provision of 42 U.S.C. §
9 1981 to be free from racially motivated beatings, arrests, searches, and the filing of
10 false charges.
11

12 92. Any reasonable police officer knew or should have known of these rights
13 at the time of the complained of conduct as they were clearly established at that time.
14

15 93. Plaintiff's race was a motivating factor in the decisions to use excessive
16 force and then maliciously prosecute Plaintiff with false charges. Defendants'
17 conduct was undertaken with the purpose of depriving Plaintiff of the equal
18 protection and benefits of the law, equal privileges and immunities under the law,
19 and due process in violation of the Fourteenth Amendment and §1981.
20
21

22 94. Defendants engaged in the conduct described by this Complaint willfully,
23 maliciously, in bad faith, and in reckless disregard of Mr. Annan-Yartey's federally
24 protected rights.
25

26 95. The acts or omissions of all individual Defendants were moving forces
27 behind Plaintiff's injuries.
28
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1 96. These individual Defendants acted in concert and joint action with each
2 other.
3

4 97. The acts or omissions of Defendants as described herein intentionally
5 deprived Plaintiff of his constitutional and statutory rights and caused him other
6 damages.
7

8 98. Defendants are not entitled to qualified immunity for the complained of
9 conduct.
10

11 99. The Defendants to this claim at all times relevant hereto were acting
12 pursuant to municipal/county custom, policy, decision, ordinance, regulation,
13 widespread habit, usage, or practice in their actions pertaining to Plaintiff.
14

15 100. As a proximate result of Defendants' unlawful conduct, Plaintiff has
16 suffered actual physical and emotional injuries, and other damages and losses as
17 described herein entitling him to compensatory and special damages, in amounts to
18 be determined at trial.
19

20 As a further result of the Defendants' unlawful conduct, Plaintiff has incurred
21 special damages, including medically related expenses and may continue to incur
22 further medically and other special damages related expenses, in amounts to be
23 established at trial.
24

25 101. On information and belief, Plaintiff may suffer lost future earnings and
26 impaired earnings capacities from the not yet fully ascertained sequel of his closed
27 head injury, in amounts to be ascertained in trial. Plaintiff is further entitled to
28 attorneys' fees and costs pursuant to 42 U.S.C. §1988, pre-judgment interest and
29
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1 costs as allowable by federal law. There may also be special damages for lien
2 interests.
3

4 102. In addition to compensatory, economic, consequential and special
5 damages, Plaintiff is entitled to punitive damages against each of the individually
6 named Defendants under 28 42 U.S.C. § 1983, in that the actions of each of these
7 individual Defendants have been taken maliciously, willfully or with a reckless or
8 wanton disregard of the constitutional and statutory rights of Plaintiff.
9
10

11 TWELVE CLAIM FOR RELIEF

12 42 U.S.C. § 1983 – Pendent Claims of Intentional and Negligent Infliction of
13 Emotional Distress Clause of the Fourteenth Amendment and 42 U.S.C. § 1981
14 (Against Defendants Officer Muranaka, Officer Chad and Officer Ohiro
15

16 103. Plaintiff hereby incorporates all other paragraphs of this Complaint as if
17 fully set forth herein.
18

19 104. In the course of assault and battering Mr. Annan-Yartey about his face
20 and body, falsely arrested, falsely prosecuted defendants Officers Muranaka, Ohira,
21 and Murphy and John Doe, Police officers embarked on a malicious, willful, and
22 grossly negligent course of conduct intended to cause Mr. Annan-Yartey to suffer
23 extreme mental and emotional distress, agony and anxiety
24
25

26 105. One objective of this extreme and outrageous course of conduct was to
27 inflict severe mental and emotional distress upon Mr. Annan-Yartey so as to
28 intimidate, terrify and dissuade him from exposing the vicious assault and battery,
29 and torture inflicted upon him. The false arrest and the unconscionable sworn false
30 affidavit for probable cause.
31
32

1 106. Defendants intentionally, recklessly or negligently caused Mr. Annan-
2 Yartey to suffer mental and emotional distress by impeding and obstructing the
3 exposure of the vicious battering and torture he suffered, and the false arrest he
4 endured.
5

6
7 VII. PRAYER FOR RELIEF WHEREFORE, Plaintiffs pray for relief as follows:

8 a. A declaration that Defendants' conduct violated the First, Fourth, Fifth, and
9 Fourteenth Amendments to the U.S. Constitution and Plaintiff's rights under the
10 Hawaii State Constitution and state common law in the manners alleged herein, upon
11 consideration of the evidence adduced at trial or otherwise;
12

13 b. A mandatory injunction requiring that Defendants possessing any arrest
14 information arising from the actions complained of herein shall collect and deliver
15 to the Plaintiff's all such records and expunge or delete all such information from
16 their records;
17

18 c. An injunction enjoining Defendants from engaging in conduct to unlawfully
19 disrupt, disperse, interfere with or prevent the lawful First Amendment activities
20 explained of herein;
21

22 d. Award Plaintiff's compensatory damages against the Defendants,
23 including, but not limited to any emotional distress, compensable costs related to
24 criminal defenses, and any other compensatory damages as permitted by law and
25 according to proof at trial;
26

27 e. Award Plaintiff's punitive damages;
28

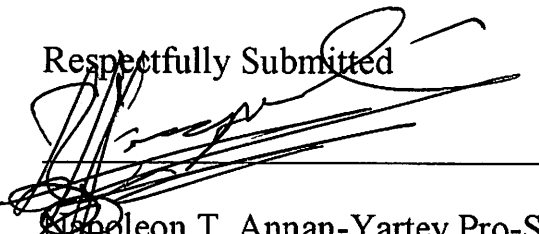
29 f. Award attorneys' fees pursuant to 42 U.S.C. § 1988;
30

31 g. Award costs of suit pursuant to 42 U.S.C. §§ 1920 and 1988; and,
32

1 h. A ward such other and further relief as this Court may deem appropriate
2 and equitable, including injunctive and declaratory relief as may be required in the
3
4 in name of justice
5

6 Dated: November/14/2016

7 Respectfully Submitted
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Napoleon T. Annan-Yartey Pro-Se